

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1253 OF 2004

Office Notes, Office Memoranda Court's or Judge's orders
of Coram, appearances, Court's
orders or directions and
Registrar's orders

Mr.P.D.Dalvi for the petitioners.

Mr.R.N.Salunkhe for respondents.

Coram : S.C.Dharmadhikari, J

Date : 23.8.2005.

PC

1. This petition is at the instance of the defendant in Regular Civil Suit No.342/2002. He has invoked this Court's jurisdiction under Article 227 of the Constitution of India to challenge an order below Exh.74 in the suit.

2. Exh.74 arose out of an earlier order passed by the trial Court on an application (Exh.67) which was filed by the respondent-plaintiff for a direction to the Court to forward the sale deed for

verification of the thumb impression to a finger print expert. The application (Exh.74) out of which the impugned order arises, prays that the petitioners-defendants have not complied with the order passed in as much as the sale deed has not been produced by them. Therefore, it could not be forwarded for examination of the Finger Print Experts. By the impugned order, the application (Exh.74) has been allowed and adverse inference is drawn by the trial Court against the petitioners/original defendants for non production of the sale deed.

3. With the assistance of the learned Advocates for both sides, I have perused the impugned order. Although, the said order is passed on an application invoking the powers of the trial Court under order 39 rule 11 of the Code of Civil Procedure, ultimately it appears that drawing an adverse inference at this stage of the

matter is something which is not traceable to the said production. The suit is ready for hearing. The plaintiff has yet to step into the witness box. I am informed by parties that issues have been framed.

4. In my view, at this stage, it was not open for the Court to pass an order drawing adverse inference merely because the sale deed is not produced. Ultimately, what is the effect of non production of the sale deed and authenticity of the thumb impression thereon on the plaintiffs' right is something which has to be decided by the Court after the evidence is led by parties. The interest of justice therefore, would be served by keeping all issues and contentions with regard to non production of the sale deed, open for being decided by the trial Court at an appropriate stage. Equally, it would be open for the defendants to contend that no inference can be drawn because of the alleged

non production. The trial Court to decide all such contentions after the evidence is led and oral arguments are advanced. In the light of the above clarification the impugned order is set aside. The trial Court to proceed in the matter and endeavour to dispose of the suit as expeditiously as possible.

(S.C.Dharmadhikari, J)